

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: DAVID HUNG

Application No. 10/622,743
Technology Center 1600

Mailed: June 26, 2009

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on August 12, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the

Application No. 10/622,743

application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, APPEALED CLAIMS

Appellant has not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 13, 14, 17, 18, 25, 26 and 29. The rejected claim that have not been appealed and/or argued for appeal is claim 18.

DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8th ed. Rev. 6, Sept 2007).

MISSING REFERENCES

The Examiner's Answer mailed November 6, 2007, includes a rejection for claims 13, 14, 17, 25, 26 and 29, under 35 U.S.C. 103(a). The

Application No. 10/622,743

references relied upon for the rejection of the claims on appeal include the following references; JAMA, Love and Hou.

The Examiner must provide a complete copy of the missing references relied upon in the rejection of the claims on appeal.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) enter a paper canceling claim 18;
- 2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims;
- 3) provide copies of the missing references; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/tsj

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